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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,566	06/29/2001	Jun-Cheng Ko	LAM2P258	6944
25920	7590	12/09/2003	EXAMINER	
MARTINE & PENILLA, LLP 710 LAKEWAY DRIVE SUITE 170 SUNNYVALE, CA 94085			VINH, LAN	
			ART UNIT	PAPER NUMBER
			1765	

DATE MAILED: 12/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/895,566

Applicant(s)

KO ET AL.

Examiner

Lan Vinh

Art Unit

1765

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-10 and 16-21.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

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AU 1765

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's argument filed on 11/12/2003 have been fully considered but they are not persuasive. Applicants argue that the office has not addressed specific feature of the claimed invention, wherein the dielectric layer is formed directly over the surface of the substrate without forming an etch stop because in fig. 3C of Cain establishes that the dielectric layer 344 has been formed on a thin layer 340, and not directly on the surface of the surface of the substrate layer. This argument is unpersuasive because although Fig. 3C in an embodiment of Cain shows that the dielectric layer 344 is not directly formed on the substrate 306, fig. 5C in another embodiment of Cain, which is relied upon for the 103 rejection of claims 1, 16, 21 in the final rejection, clearly shows a dielectric layer 402 is formed on a substrate 206 without an etch stop layer in between the layer 402 and the substrate 206. Thus, the examiner asserts that the office action has addressed the claimed feature of forming a dielectric layer directly over the surface of the substrate without forming an etch stop layer thereon. It is argued that Cain can not use the DC bias monitoring to detect the endpoint of the dielectric layer because Cain uses the sacrificial layer to detect the endpoint. The examiner disagrees because as recited in col 8, lines 35-60 of Cain, Cain discloses that an endpoint signal is generated upon completing etching of the dielectric layer 344 and using plasma etcher employing endpoint apparatus sensitive to DC bias level of plasma to implement etching technique of his invention. Thus, the examiner asserts that Cain discloses using DC bias monitoring to detect the endpoint of the dielectric layer. The applicants also argue that the alleged open claimed language of the claimed invention can not alter the feature of the claimed invention wherein the dielectric layer is formed on the substrate surface directly because in Cain, before the dielectric layer can be formed, the sacrificial must be first formed over the surface of the substrate. The examiner disagrees because as shown in Fig. 5C of Cain, the dielectric layer 402 is formed on the substrate 206 without having a sacrificial layer in between.